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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

RICHARD GRAHAM, ) Case No. CV 11-1829 JPR  
Plaintiff, ) MEMORANDUM OPINION AND ORDER  
v. ) AFFIRMING THE COMMISSIONER  
MICHAEL J. ASTRUE, )  
Commissioner of the )  
Social Security )  
Administration, )  
Defendant. )  
\_\_\_\_\_  
)

**I. PROCEEDINGS**

Plaintiff seeks review of the Commissioner's final decision denying his application for Supplemental Security Income ("SSI"). The parties filed a Joint Stipulation on December 14, 2011. The Court has taken the Joint Stipulation under submission without oral argument. For the reasons stated below, the Commissioner's decision is affirmed and this action is dismissed.

**II. BACKGROUND**

Plaintiff was born on July 2, 1964. (Administrative Record

1 ("AR") 86.) He graduated high school and worked sporadically at  
2 various jobs. (AR 98.)

3 On April 16, 2007, Plaintiff filed an application for SSI,  
4 alleging that he had been unable to work since the start of the year  
5 because of "diabetes, heart condition, seizures, arthritis,  
6 schizophrenia." (AR 97.) After Plaintiff's application was denied,  
7 he requested a hearing before an Administrative Law Judge ("ALJ").  
8 (AR 58.) It was held on November 3, 2008, at which time Plaintiff  
9 appeared with counsel and testified on his own behalf. (AR 25-48.)  
10 The ALJ determined that Plaintiff was not disabled because he did not  
11 have a "severe impairment or combination of impairments," physical or  
12 mental. (AR 19.) On January 5, 2011, the Appeals Council denied  
13 Plaintiff's request for review. (AR 1-5.) This action followed.

14 **III. STANDARD OF REVIEW**

15 Pursuant to 42 U.S.C. § 405(g), a district court may review the  
16 Commissioner's decision to deny benefits. The Commissioner's or ALJ's  
17 findings and decision should be upheld if they are free from legal  
18 error and are supported by substantial evidence based on the record as  
19 a whole. § 405(g); Richardson v. Perales, 402 U.S. 389, 401, 91 S.  
20 Ct. 1420, 1427, 28 L. Ed. 2d 842 (1971); Parra v. Astrue, 481 F.3d  
21 742, 746 (9th Cir. 2007). Substantial evidence means such evidence as  
22 a reasonable person might accept as adequate to support a conclusion.  
23 Richardson, 402 U.S. at 401; Lingenfelter v. Astrue, 504 F.3d 1028,  
24 1035 (9th Cir. 2007). It is more than a scintilla but less than a  
25 preponderance. Lingenfelter, 504 F.3d at 1035 (citing Robbins v. Soc.  
26 Sec. Admin., 466 F.3d 880, 882 (9th Cir. 2006)). To determine whether  
27 substantial evidence supports a finding, the reviewing court "must  
28 review the administrative record as a whole, weighing both the

1 evidence that supports and the evidence that detracts from the  
2 Commissioner's conclusion." Reddick v. Chater, 157 F.3d 715, 720 (9th  
3 Cir. 1998). "If the evidence can reasonably support either affirming  
4 or reversing," the reviewing court "may not substitute its judgment"  
5 for that of the Commissioner. Id. at 720-21.

6 **IV. THE EVALUATION OF DISABILITY**

7 People are "disabled" for purposes of receiving Social Security  
8 benefits if they are unable to engage in any substantial gainful  
9 activity owing to a severe physical or mental impairment that is  
10 expected to result in death or which has lasted, or is expected to  
11 last, for a continuous period of at least 12 months. 42 U.S.C.  
12 § 423(d)(1)(A); Drouin v. Sullivan, 966 F.2d 1255, 1257 (9th Cir.  
13 1992).

14 A. The five-step evaluation process

15 The Commissioner (or ALJ) follows a five-step sequential  
16 evaluation process in assessing whether a claimant is disabled. 20  
17 C.F.R. § 416.920(a)(4); Lester v. Chater, 81 F.3d 821, 828 n.5 (9th  
18 Cir. 1995) (as amended Apr. 9, 1996). In the first step, the  
19 Commissioner must determine whether the claimant is currently engaged  
20 in substantial gainful activity; if so, the claimant is not disabled  
21 and the claim is denied. § 416.920(a)(4)(i). If the claimant is not  
22 engaged in substantial gainful activity, the second step requires the  
23 Commissioner to determine whether the claimant has a "severe"  
24 impairment or combination of impairments significantly limiting her  
25 ability to do basic work activities; if not, a finding of  
26 nondisability is made and the claim is denied. § 416.920(a)(4)(ii).  
27 If the claimant has a "severe" impairment or combination of  
28 impairments, the third step requires the Commissioner to determine

1 whether the impairment or combination of impairments meets or equals  
 2 an impairment in the Listing of Impairments ("Listing") set forth at  
 3 20 C.F.R., Part 404, Subpart P, Appendix 1; if so, disability is  
 4 conclusively presumed and benefits are awarded. § 416.920(a)(4)(iii).

5 If the claimant's impairment or combination of impairments does not  
 6 meet or equal an impairment in the Listing, the fourth step requires  
 7 the Commissioner to determine whether the claimant has sufficient  
 8 residual functional capacity ("RFC")<sup>1</sup> to perform his past work; if so,  
 9 the claimant is not disabled and the claim is denied.

10 § 416.920(a)(4)(iv). The claimant has the burden of proving that he  
 11 is unable to perform past relevant work. Drouin, 966 F.2d at 1257.  
 12 If the claimant meets that burden, a *prima facie* case of disability is  
 13 established. Id. If that happens or if the claimant has no past  
 14 relevant work, the Commissioner then bears the burden of establishing  
 15 that the claimant is not disabled because he can perform other  
 16 substantial gainful work available in the national economy.

17 § 416.920(a)(4)(iv). That determination comprises the fifth and final  
 18 step in the sequential analysis. § 416.920; Lester, 81 F.3d at 828  
 19 n.5; Drouin, 966 F.2d at 1257.

20       B.     The ALJ's application of the five-step process

21       At step one, the ALJ found that Plaintiff had not engaged in any  
 22 substantial gainful activity since April 16, 2007, the date he applied  
 23 for SSI. (AR 19.) At step two, the ALJ concluded that Plaintiff  
 24 "does not have an impairment or combination of impairments that has  
 25 significantly limited (or is expected to significantly limit) the

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27       <sup>1</sup> RFC is what a claimant can still do despite existing exertional  
 28 and nonexertional limitations. 20 C.F.R. § 416.945(a); see Cooper v. Sullivan, 880 F.2d 1152, 1155 n.5 (9th Cir. 1989).

1 ability to perform basic work-related activities for 12 consecutive  
2 months; therefore, the claimant does not have a severe impairment or  
3 combination of impairments." (AR 19.) Because the ALJ found that  
4 Plaintiff did not have a severe impairment, he did not consider steps  
5 three through five of the disability determination.

6 The ALJ found that Plaintiff did not have a severe mental  
7 impairment because his symptoms were "well-controlled with  
8 medication." (AR 20.) Plaintiff does not appear to contest that  
9 finding.

10 Next, the ALJ examined whether Plaintiff had any severe physical  
11 impairments. The ALJ found that Plaintiff's "history of diabetes  
12 mellitus and hypertension" were not severe impairments because "the  
13 medical records do not indicate any significant treatment for such  
14 impairments." (AR 20.) He noted that while Plaintiff took various  
15 medicines for these conditions, he usually had "no new complaints"  
16 when he returned to his doctor for refills. (AR 20.) The ALJ noted  
17 that Plaintiff stated that Motrin controlled his back pain, and  
18 various neurological and musculoskeletal examinations and tests all  
19 were normal. (AR 20-21.)

20 The ALJ expressly rejected the opinion of Plaintiff's treating  
21 physician, Dr. E.A. Ayodele, who had been Plaintiff's doctor since  
22 June 2004 (AR 21) and had last examined him in April 2008 (AR 134).  
23 Dr. Ayodele completed an RFC form for Plaintiff. (AR 134-37.) At the  
24 conclusion of it, Dr. Ayodele noted the following:

25 Patient has frequent chest pain and frequently complains of  
26 dizziness. Patient also said that his nerves are bad. Mom  
27 claimed that patient is slow - also had history of seizures  
28 in the past.

1 (AR 137.) When asked to identify all "clinical findings and objective  
 2 signs" supporting his diagnoses of hypertension, angina, and other  
 3 ailments, Dr. Ayodele wrote, "frequent chest pain, generalized  
 4 weakness of joints on exam." (AR 134.)

5 The ALJ found that Dr. Ayodele's opinion that Plaintiff had  
 6 various restrictions on how much he could lift and how long he could  
 7 sit or stand were "inconsistent with all of the objective clinical and  
 8 diagnostic findings, which have . . . been given great weight." (AR  
 9 21.) The ALJ also noted that while Dr. Ayodele stated that Plaintiff  
 10 could lift up to 10 pounds only occasionally (AR 136), Plaintiff  
 11 himself stated that he could lift up to 30 pounds (AR 184). (AR 21.)  
 12 The ALJ gave "significant weight" to the opinion of Dr. Ella Tamayo,  
 13 the consultative examining doctor, who examined Plaintiff in June 2007  
 14 and found that he had no significant functional restrictions. (AR 20-  
 15 21.) Her examination of Plaintiff was "unremarkable." (AR 187.)

16 Plaintiff was tentatively diagnosed with carpal tunnel syndrome  
 17 by Dr. Ayodele, but tests conducted in November 2007 were completely  
 18 normal and showed no evidence of that affliction or "other compressive  
 19 neuropathy." (AR 263-64.)

## 20 V. DISCUSSION

21 Plaintiff contends that the ALJ improperly rejected the opinion  
 22 of Dr. Ayodele and therefore incorrectly determined that he did not  
 23 suffer from any severe impairment or combination of impairments. (J.  
 24 Stip. at 4.)

### 25 A. Step two

26 At step two of the sequential evaluation process, a plaintiff has  
 27 the burden to present evidence of medical signs, symptoms, and  
 28 laboratory findings that establish a medically determinable physical

1 or mental impairment that is severe and that can be expected to result  
 2 in death or last for a continuous period of at least 12 months.

3 Ukolov v. Barnhart, 420 F.3d 1002, 1004-05 (9th Cir. 2005) (citing 42  
 4 U.S.C. §§ 423(d)(3), 1382c(a)(3)(D));<sup>2</sup> see 20 C.F.R. § 416.920.

5 Substantial evidence supports an ALJ's determination that a claimant  
 6 is not disabled at step two when "there are no medical signs or  
 7 laboratory findings to substantiate the existence of a medically  
 8 determinable physical or mental impairment." Ukolov, 420 F.3d at  
 9 1004-05 (citing SSR 96-4p). An impairment may never be found on the  
 10 basis of the claimant's symptoms alone. Id. at 1005.

11 Step two is "a de minimis screening device [used] to dispose of  
 12 groundless claims." Smolen v. Chater, 80 F.3d 1273, 1290 (9th Cir.  
 13 1996). Applying the applicable standard of review to the requirements  
 14 of step two, a court must determine whether an ALJ had substantial  
 15 evidence to find that the medical evidence clearly established that  
 16 the claimant did not have a medically severe impairment or combination  
 17 of impairments. Webb v. Barnhart, 433 F.3d 683, 687 (9th Cir. 2005);  
 18 see also Yuckert v. Bowen, 841 F.2d 303, 306 (9th Cir. 1988) ("Despite  
 19 the deference usually accorded to the Secretary's application of  
 20 regulations, numerous appellate courts have imposed a narrow  
 21 construction upon the severity regulation applied here."). An  
 22 impairment or combination of impairments can be found "not severe"  
 23 only if the evidence establishes a slight abnormality that has "no  
 24 more than a minimal effect on an individual's ability to work." Webb,  
 25 433 F.3d at 686 (citation omitted).

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26       <sup>2</sup> A "medical sign" is "an anatomical, physiological, or  
 27 psychological abnormality that can be shown by medically acceptable  
 28 clinical and laboratory diagnostic techniques." Ukolov, 420 F.3d at  
 1005.

1           B. Rejection of treating physician's opinion

2         Generally, the opinions of treating physicians are afforded more  
3 weight than the opinions of nontreating physicians because treating  
4 physicians are employed to cure and have a greater opportunity to know  
5 and observe the claimant. Smolen, 80 F.3d at 1285. The weight given  
6 a treating physician's opinion depends on whether it was supported by  
7 sufficient medical data and was consistent with other evidence in the  
8 record. See 20 C.F.R. § 416.927(d)(2). If a treating physician's  
9 opinion was well supported by medically acceptable clinical and  
10 laboratory diagnostic techniques and was not inconsistent with the  
11 other substantial evidence in the record, it should be given  
12 controlling weight and should be rejected only for "clear and  
13 convincing" reasons. See Lester, 81 F.3d at 830; § 416.927(d)(2).  
14 When a treating physician's opinion conflicts with other medical  
15 evidence, the ALJ must provide "specific and legitimate reasons" for  
16 discounting the treating opinion. Lester, 81 F.3d at 830; Orn v.  
17 Astrue, 495 F.3d 625, 632 (9th Cir. 2007). Factors relevant to the  
18 evaluation of a treating physician's opinion include the "[l]ength of  
19 the treatment relationship and the frequency of examination" as well  
20 as the "nature and extent of the treatment relationship" between the  
21 patient and the physician. § 416.927(d)(2)(i)-(ii).

22           C. Analysis

23         As the ALJ noted, there appears to be not a single medical sign  
24 or laboratory finding in the record demonstrating anything other than  
25 normal or minimally abnormal findings. Plaintiff has not pointed to  
26 the results of any such tests or examinations. The law is clear that  
27 a finding of impairment cannot rest on a plaintiff's subjective  
28 symptoms alone.

1 Plaintiff urges the Court to find that the ALJ improperly  
 2 rejected Dr. Ayodele's diagnosis of severe impairments. Plaintiff  
 3 cites law for the proposition that a later medical opinion is entitled  
 4 to more weight than an older one and notes that Dr. Ayodele filled out  
 5 Plaintiff's RFC form in April 2008 while Dr. Ella-Tamayo conducted her  
 6 examination of Plaintiff in June 2007. (J. Stip. at 7-8.) But the  
 7 cases Plaintiff cites do not support his position, because in each of  
 8 them there was specific medical evidence that the claimant's condition  
 9 was deteriorating over time. See Stone v. Heckler, 761 F.2d 530, 532  
 10 (9th Cir. 1985) (rejecting older reports because evidence showed  
 11 "continuing degenerative changes"); Wier ex rel. Wier v. Heckler, 734  
 12 F.2d 955, 964 (3d Cir. 1984) (rejecting reliance on stale medical  
 13 records when evidence showed "appellant's mental development relative  
 14 to his chronological age has slowed in adolescence"). No such  
 15 evidence exists here, and therefore there was no reason for the ALJ to  
 16 discount Dr. Ella-Tamayo's findings. In fact, as the ALJ noted,  
 17 Plaintiff has by all accounts responded well to treatment.<sup>3</sup>

18 The ALJ was entitled to credit the finding of examining doctor  
 19 Ella-Tamayo because it was supported by the doctor's independent  
 20 clinical findings and thus constituted substantial evidence upon which  
 21 the ALJ could properly rely to reject Dr. Ayodele's opinion. See  
 22 Tonapetyan v. Halter, 242 F.3d 1144, 1149 (9th Cir. 2001). Any  
 23 conflict in the properly supported medical-opinion evidence was the  
 24 sole province of the ALJ to resolve. See Andrews v. Shalala, 53 F.3d

25       <sup>3</sup> Plaintiff apparently was looking for work after the alleged onset  
 26 date of his complete disability. (See AR 25 ("11/8/07: Pt investigating  
 27 job opportunity today UPS.").) Because the ALJ did not rely on this  
 28 fact in finding that Plaintiff did not have a severe impairment, the  
Court does not do so either. See Orn, 495 F.3d at 630; Connett v. Barnhart, 340 F.3d 871, 873 (9th Cir. 2003).

1 1035, 1041 (9th Cir. 1995). The ALJ provided three specific and  
2 legitimate reasons for rejecting Dr. Ayodele's opinion. Moreover,  
3 impairment cannot be based on symptoms alone, and, as the ALJ found,  
4 no medical signs or laboratory findings supported Dr. Ayodele's  
5 opinion. See Conn v. Barnhart, 340 F.3d 871, 875 (9th Cir. 2003)  
6 (treating doctor's opinion properly rejected when treatment notes  
7 "provide no basis for the functional restrictions he opined should be  
8 imposed on [claimant]"). Accordingly, the ALJ did not err in finding  
9 that Plaintiff did not have a severe impairment or combination of  
10 impairments. Thus, Plaintiff's contentions do not warrant remand.

11 **VI. CONCLUSION**

12 Consistent with the foregoing, and pursuant to sentence four of  
13 42 U.S.C. § 405(g),<sup>4</sup> IT IS ORDERED that judgment be entered AFFIRMING  
14 the decision of the Commissioner and dismissing this action with  
15 prejudice. IT IS FURTHER ORDERED that the Clerk serve copies of this  
16 Order and the Judgment on counsel for both parties.

17  
18 DATED: January 3, 2012

19 \_\_\_\_\_  
20 JEAN P. ROSENBLUTH  
U.S. Magistrate Judge

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26 \_\_\_\_\_  
27 <sup>4</sup> This sentence provides: "The [district] court shall have power  
28 to enter, upon the pleadings and transcript of the record, a judgment  
affirming, modifying, or reversing the decision of the Commissioner of  
Social Security, with or without remanding the cause for a rehearing."